

(2002) 05 DEL CK 0280
In the Delhi High Court
Case No : Criminal M (M) No. 523/97

Bihari Lal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Companies Act, 1956 — Section 617
Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1), 482
Penal Code, 1860 (IPC) — Section 21, 408, 471

Citation : (2002) 4 AD 895 : (2002) CriLJ 3715 : (2002) 98 DLT 220 : (2002) 63 DRJ 525 : (2002) 4 RCR(Criminal) 832

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Meena Chaudhary Sharma, for the Appellant; Pawan Sharma and O.P. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Agarwal, J.—By this petition u/s 482 Code of Criminal Procedure (for short, "Cr.P.C."), petitioner is seeking quashing of FIR No. 672/93, under Sections 408/471 IPC, P.S. Connaught Place, New Delhi, and proceedings thereon, pending in the court of Metropolitan Magistrate, Patiala House, Delhi.

2. Briefly stated the prosecution case is that petitioner is working as a Peon in the Oriental Insurance Company; on 30 September, 1993, Jolly Datta, Divisional Manager of the company lodged a report against the petitioner alleging that a sum of Rs.2,17,258/- was entrusted to him for depositing in the Bank of India, the bankers of the company but the petitioner produced a forged receipt purported to be genuine; after investigation challan was filed in the court; and cognizance was taken and accused was summoned. By order dated 8.11.96, learned Magistrate, held that the prima facie case under the above noted sections is made out against the petitioner. This order is under challenge.

3. I have heard learned counsel for the parties and have also gone through the

written arguments filed by the petitioner.

4. The case of the petitioner is that he was working as a peon in the Oriental Insurance Company Ltd. which is a subsidiary of General Insurance Corporation, which was formed under the General Insurance (Emergency Provisions) Act, 1971 (hereinafter "the Act"), that the public servant as per sub-clause 12 of Section 21 of IPC, includes as employee of a Government company, as defined in Section 617 of the Companies Act, 1956. He argued that the petitioner was an employee of the Oriental Insurance Company Ltd., which is a subsidiary of General Insurance Corporation, created by an Act of Parliament, Therefore, he was a public servant. The case of the petitioner further is that no prosecution against the him could be launched without sanction as required u/s 197 Cr.P.C., and that it was his official duty to deposit the money in the bank of India, Connaught Place, New Delhi and the alleged offence of criminal breach of trust and forging a document and using it as genuine, was done in discharge of his official duty. Reliance was placed on the decisions of Apex Court in Rizwan Ahmed Javed Shaikh and Others Vs. Jammal Patel and Others, , P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, and State of Haryana and others Vs. Ch. Bhajan Lal and others, . Learned counsel for state argued to the contrary.

5. In order to appreciate the rival contentions reference to section 197 of Code of Criminal Procedure is necessary, which reads:

"Prosecution of Judges and public servants. -(I) when any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government.

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, or the State Government."

(2) xxxx (3) xxxx (3A) xxxx (3B) xxxx (4) xxxx

6. Bare reading of Section 197 Cr.P.C. shows that its applicability to be merely a public servant is not enough. It has to be further shown (i) that such a public servant is or was not removable from office save by or with the sanction of the Government and (ii) that the alleged offence should have been committed by him while acting or purporting to act in discharge of his duties. All these conditions must exist before Section 197 Cr.P.C. can be invoked.

7. Assuming that the petitioner was a public servant, it has to be further shown

that he was not removable from his office save by or with the sanction of the Government. Petitioner was merely a peon, who could be removed by the Divisional Manager or the Manager of the Company. In fact there is no averments in the petition or in the written arguments filed, that the petitioner could be removed only by the State of Central Government. In the absence of any such averments, the first ingredient necessary for invoking section 197 Cr.P.C. is not justified. Rejecting similar arguments, the Apex Court in *Nagraj Vs. State of Mysore*, , held that a sub-Inspector of Police, who was below the grade of Assistant Superintendent, could be dismissed by Inspector General of Police, by virtue of Section 26 of the Mysore Police Act, Therefore, no sanction of the State Government for his prosecution was necessary, even if, he had committed an offence while acting or purporting to act in discharge of his official duty.

8. Next requirement of section 197 Cr.P.C. is that the alleged act must have been committed by him while acting or purported to act in the discharge of his official duty. Law in this regard is also well settled. The Supreme Court in *B. Saha and Others Vs. M.S. Kochar*, after examining several earlier decisions held that the words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, no part of an official duty can be to commit an offence It can never be so, In the wider sense, these words would take under their umbrella every act constituting an offence committed in the course of the same transaction, in which the official duty is performed or purports to be performed It was held:

" The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for "it is no part of an official duty to commit an offence, and never can be". In the wider sense these words will take under their umbrella every act Constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1) an act Constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami J. in *Baijnath vs. State of Madhya Pradesh* AIR 1996 SC 220 : it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted".

The question whether the offence was committed in the course of official duties or under colour of official duties, would depend on the facts of each case.

9. In the present case, as per the allegations petitioner had embezzled a sum of Rs. 2,17,258/-, fabricated a false bank receipt and produced the same in proof of his having deposited the said amount in the bank. The acts complained of constitute grave offences under the Penal Code. These acts cannot be said to have been done in discharge of his official duty. It can never be the official duty of any public servant to embezzle the amount, forge the receipt and produce the same to show that the money has been deposited.

10. There is absolutely no merit in the petition, the judgments relied upon by the counsel for petitioner are entirely on different facts and do not apply to the facts of this case.

For the foregoing reasons, the petition is dismissed. Trial court record be sent back forthwith. Trial court is directed to expedite the trial. Any observation made herein shall not affect the merits of the case.